

United States Senate

January 9, 2019

Kirstjen Nielsen
Secretary
United States Department of Homeland Security
3801 Nebraska Ave., NW
Washington, DC 20528

Matthew Whitaker
Acting Attorney General
United States Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

Dear Secretary Nielsen and Acting Attorney General Whitaker:

I am writing to you regarding errors and misleading findings contained in a January 2018 report titled, “Executive Order 13780: *Protecting the Nation From Foreign Terrorist Entry into the United States*, Initial Section 11 Report” (the Report).¹ I am deeply concerned that your Departments are refusing to correct or retract the Report even though the Department of Justice (DOJ) acknowledged that the Report likely misled the American people.² Providing the public accurate and unbiased information is paramount, and therefore, I am asking you to reconsider the decision declining to correct or retract the Report.

Following President Trump’s third attempt to ban people from majority-Muslim countries from entering the United States, your Departments—in accordance with the executive order—issued the Report. The Report misleadingly connects terrorism and crime to immigration by presenting false data in order to generate fear regarding criminality among immigrants coming to the United States. For instance, the Report claimed that between 2003 and 2009, the Government Accountability Office (GAO) estimated that immigrants were convicted of 69,929 sex offenses.³ According to the GAO’s own data, the actual time period in which the 69,929 offenses were alleged to have been committed was from 1955 to 2010; not between 2003 and 2009.⁴ Moreover, the GAO data covered sex offense arrests, not convictions as the Report stated.⁵ Despite the

¹ U.S. DEPARTMENT OF HOMELAND SECURITY & UNITED STATES DEPARTMENT OF JUSTICE, EXECUTIVE ORDER 13780: PROTECTING THE NATION FROM FOREIGN TERRORIST ENTRY INTO THE UNITED STATES, INITIAL SECTION 11 REPORT, Jan. 2018, available at <https://www.justice.gov/opa/press-release/file/1026436/download>.

² See Letter from Michael H. Allen, Deputy Assistant Attorney General, Policy, Management, and Planning to Ben Berwick, Protect Democracy, et al. (Dec. 21, 2018), available at <https://www.documentcloud.org/documents/5674047-DOJ-Response-Re-Reconsideration-122118.html>.

³ REPORT, *supra* note 1, at 8.

⁴ Ellen Nakashima, *Justice Dept. admits error but won't correct report linking terrorism to immigration*, Jan. 3, 2019, THE WASHINGTON POST, https://www.washingtonpost.com/world/national-security/justice-dept-admits-error-but-wont-correct-report-linking-terrorism-to-immigration/2019/01/03/cd29997a-0f69-11e9-831f-3aa2c2be4cbd_story.html?utm_term=.0834f9be922a.

⁵ *Id.*

deceptive presentation of blatantly false data, the DOJ classified those significant mistakes as “mere editorial errors” and refused to correct the Report.⁶ That decision is inexplicable and leaves the Report as grossly misleading.

The Report also misleadingly cherry picked a handful of similar cases of foreign-born persons convicted of international terrorism out of a total pool of 402 people convicted of that offense in an effort to paint “family-based migration” as a national security threat.⁷ The DOJ later acknowledged “that a focus on eight seemingly similar ‘illustrative examples’ from a list of more than 400 convictions could cause some readers of the Report to question its objectivity.”⁸ Despite this conclusion, the decision was made to leave the report as is and not select more appropriate examples that present a more accurate picture to the American people.

The failure to correct or retract the Report is especially troubling because this administration has consistently tried to draw a false connection between immigration and crime with little to no evidence to support its assertions. For instance, Matthew Albence, the Executive Associate Director of Enforcement and Removal Operations at U.S. Immigration and Customs Enforcement (ICE), claimed at a Senate Judiciary Committee oversight hearing on July 31, 2018, that in FY 2017, ICE arrested 127,000 aliens with criminal convictions or pending charges.⁹ However, when I pressed him to provide a more specific breakdown of the numbers he cited, he was unable to do so.¹⁰

Alarming, ICE, in particular, is a major culprit of misleadingly citing data to link immigration to criminality. Namely, ICE often claims that a large percentage—66 percent in FY 2018—of the immigrants it arrests have criminal records, which suggests that those people are a danger to our communities.¹¹ However, a cursory review of the data in FY 2018 demonstrates that after non-violent drug offenses and traffic offenses, *immigration-related offenses* are the third largest category of offenses that constitutes the 66 percent of people ICE claims are “criminals.”¹²

More recently, the Trump Administration has claimed that terrorists are attempting to enter the United States through the Southwest border, stating that in FY 2017, 3,755 known or suspected terrorists were prevented from traveling to or entering the United States. But, citing that number is highly misleading because it refers to the total number of known or suspected terrorists stopped from entering the United States from all over the world, not the Southwest border. In fact, news reports have now noted that Customs and Border Patrol reported to Congress in May 2018 that only *six* immigrants whose names were on the federal government list of known or

⁶ Allen Letter, *supra* note 2, at 4.

⁷ Nakashima, *supra* note 5.

⁸ Allen Letter, *supra* note 2, at 3.

⁹ *Oversight of Immigration Enforcement and Family Reunification Efforts: Hearing Before the S. Comm on the Judiciary*, 115th Cong. (2018) (testimony of Matthew Albence, Executive Associate Director, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security).

¹⁰ Senator Cory A. Booker, Questions for the Record for Matthew Albence, Executive Associate Director, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security (submitted August 7, 2018). No response provided.

¹¹ U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY, Fiscal Year 2018 ICE Enforcement and Removal Operations Report 2 (Dec. 14, 2018), <https://www.ice.gov/doclib/about/offices/ero/pdf/eroFY2018Report.pdf>.

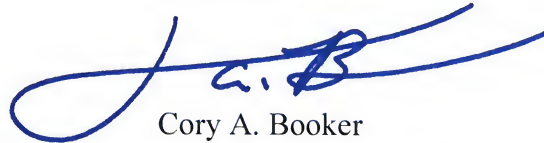
¹² *Id.* at 4.

suspected terrorists were apprehended at the Southwest border in the first half of FY 2018.¹³ Yet this administration has continued to propagate false data in an effort to justify its fear-mongering and ineffective immigration policies.

Last night, the President of the United States continued this troubling pattern of misleading the American people. To justify his request for Congress to provide \$5 billion in funding for a border wall, he claimed there is a crisis at the Southwest border. However, data demonstrates that illegal border crossings have, in fact, been declining for years, belying his characterization that there is a crisis at the Southwest border that would justify a wall.¹⁴

Given the Trump Administration's consistent misstatements and misleading characterizations, I ask you to reconsider your decision and correct or retract the Report. It is time the administration cease this troubling pattern of providing false and inaccurate information in an effort to justify its political agenda.

Sincerely,



Cory A. Booker
United States Senator

¹³ Julia Ainsley, *Only six immigrants in terrorism database stopped by CBP at southern border in first half of 2018*, Jan. 7, 2019, NBC NEWS, <https://www.nbcnews.com/politics/immigration/only-six-immigrants-terrorism-database-stopped-cbp-southern-border-first-n955861>.

¹⁴ United States Border Patrol, Southwest Border Sectors, Total Illegal Alien Apprehensions by Fiscal Year (2018) <https://www.cbp.gov/sites/default/files/assets/documents/2017-Dec/BP%20Southwest%20Border%20Sector%20Apps%20FY1960%20-%20FY2017.pdf>.